



MAINE REVENUE SERVICES SALES, FUEL & SPECIAL TAX DIVISION SERVICE PROVIDER TAX INSTRUCTIONAL BULLETIN 55

Service Provider Tax

This bulletin is intended solely as advice to assist persons in determining, exercising or complying with their legal rights, duties or privileges. It contains general and specific information of interest as well as interpretations and determinations by Maine Revenue Services regarding issues commonly faced by your business. Taxpayers are solely responsible for reviewing and complying with Maine statutory laws. Portions of the Service Provider Tax Law referred to in this bulletin can be found at the end of the bulletin in Attachment #1.

The Maine Service Provider Tax was enacted in 2004. This tax is imposed upon the providers of certain identified services provided in Maine. Effective July 1, 2004, the tax was imposed upon the providers of

- extended cable television services;
- fabrication services;
- rental of video media and video equipment;
- rental of furniture, audio media and audio equipment pursuant to a rental-purchase agreement;
- telecommunications services;
- installation, maintenance or repair of telecommunications equipment; and
- private nonmedical institution services.

The service provider tax rate is 5%; the same as the Maine sales tax rate. Prior to July 1, 2004, all of the services listed above, with the exception of the private nonmedical institution services, were subject to Maine's 5% sales tax.

Effective July 1, 2005, the Service Provider Tax was expanded to include

- community support services,
- day habilitation services,
- personal support services, and
- residential training services.

All of these services must be provided by a designated provider under contract with the Maine Department of Health and Human Services ("DHHS").

Effective October 1, 2005, the Service Provider Tax was further expanded to include

- extended satellite television services.

The Service Provider Tax is not levied on the consumer, rather it is the provider who is responsible for the tax. The law allows the provider to pass the tax on to the consumer, but only if it is separately stated and identified as a "service provider tax".

1. SERVICES ADMINISTERED BY MAINE REVENUE SERVICES

A. EXTENDED CABLE AND SATELLITE TELEVISION SERVICES

Cable and satellite television services are taxed only on charges for services over and above the basic programming service (the package offering the least amount of service). Taxable services include, but are not limited to, extended packages containing additional channels, movie or sports channels, pay-per-view programming, connection fees to additional sets and rental fees for use of special equipment such as converter boxes.

B. FABRICATION SERVICES

“Fabrication services” means the production of tangible personal property for a consideration for a person who furnishes, either directly or indirectly, the materials used in that production. Fabrication services, as defined by the Maine statute, may be distinguished from manufacturing by identifying the person who furnishes the raw materials to be used in production. In order for a service to be considered “fabrication”, the raw materials must be supplied by the purchaser of the services (the customer) as opposed to the supplier of the services (the fabricator). If the purchaser of the service, or a third party at the direction of the purchaser, supplies the raw materials upon which the fabrication service will occur, then these services qualify as fabrication services and are subject to the service provider tax. Please refer to Instructional Bulletin 46 for more detailed information.

C. RENTAL OF VIDEO MEDIA AND VIDEO EQUIPMENT

“Video media” includes video tapes (VHS), video games, and digital video discs (DVD). “Video equipment” includes VCRs, DVD players/recorders, camcorders and video game equipment such as Sony Playstation and Xbox. LCD projectors are not considered video equipment. Late charge fees and the sale of movie passes are also taxable as they represent payment for rentals of video media or equipment rentals. Damage protection fees are not subject to tax provided they are optional to the customer and separately stated.

D. RENTAL OF FURNITURE, AUDIO MEDIA AND AUDIO EQUIPMENT

The Service Provider Tax applies to the rental of furniture, audio media and audio equipment but only when such rentals are made by “rent-to-own” businesses that are regulated by Title 9-A, section 11-105. Furniture is defined by statute (see Attachment 1) and includes home electronic devices. The tax applies to each rental payment as it is made.

E. TELECOMMUNICATIONS SERVICES

“Telecommunications services” includes all 2-way interactive communications that begin and end within the State of Maine (intrastate service). Interstate service and access services are not subject to the Service Provider Tax. “Telecommunications services” does not include directory advertising services, charges for leasing telecommunications

equipment, or prepaid calling services. Mobile telecommunications services are taxable but only to customers whose place of primary use is within the State of Maine.

F. INSTALLATION, MAINTENANCE OR REPAIR OF TELECOMMUNICATIONS EQUIPMENT

Labor charges imposed for the installation, maintenance or repair of telecommunications equipment are subject to the Service Provider Tax. This includes installation and repair of telephone systems, fax machines, 2-way radios and modems. “Telecommunications equipment” does not include computers or computer equipment, with the exception of modems. For multi-functioning machines, such as a fax/printer/copier combined unit, only the labor to install, maintain or repair the modem is subject to the Service Provider Tax.

For the six services listed above that are administered by Maine Revenue Services, most taxpayers will be filing both a Maine Sales/Use Tax return and a Maine Service Provider Tax return. When calculating these returns, taxpayers should include all services subject to the service provider tax, and reported on the service provider tax return, as a part of “Gross Sales” and “Exempt Sales” on lines 1 and 2 of their sales tax return. This ensures that all services being offered by a business are included in its total gross sales reported on the sales tax return. Since the issuance of Maine Resale Certificates is based upon the “Gross Sales” line of the sales tax return, taxpayers should use this method of reporting.

2. SERVICES ADMINISTERED BY DEPARTMENT OF HEALTH AND HUMAN SERVICES

A. PRIVATE NONMEDICAL INSTITUTION SERVICES

Private nonmedical institution services offered by a provider that is licensed by DHHS to provide care to four or more MaineCare-eligible residents in single or multiple facilities are subject to the Service Provider Tax. This does not include a health insurance organization, hospital, nursing home or community health care center.

B. COMMUNITY SUPPORT SERVICES

Community support services offered by a provider that is licensed by DHHS to provide rehabilitative services for adults pursuant to an individual support plan that promotes a person’s recovery and integration of the person into the community are subject to the Service Provider Tax. These providers also sustain the person’s current living situation or another living situation of the person’s choice.

C. DAY HABILITATION SERVICES

Day habilitation services offered by a provider under a contract with DHHS for children or adults with mental retardation and include assistance with self-help and socialization are subject to the Service Provider Tax. Such service may be in a nonresidential setting separate from the home or facility in which the person resides. Such services are offered to enable the person to attain or maintain maximum functionality. These day habilitation

services provided through DHHS are commonly referred to as waiver 110; FSD; or DDC services.

D. PERSONAL SUPPORT SERVICES

Personal support services offered by a provider under a contract with DHHS for children or adults with mental retardation, including direct assistance with eating, bathing, dressing, personal hygiene and other activities of daily living are subject to the Service Provider Tax. Such services may include instrumental activities of daily living such as assistance with the preparation of meals, but not the cost of the meals. This may also include assistance with housekeeping chores. The provider may or may not be related to the person receiving assistance. These personal support services provided through DHHS are commonly referred to as waiver 125 services.

E. RESIDENTIAL TRAINING SERVICES

Residential training services offered by a provider under a contract with DHHS for children or adults with mental retardation to assist them in daily living skills are subject to the Service Provider Tax. Such services may include assistance with personal grooming, household chores, eating or food preparation and other social and adaptive skills necessary for daily living. These residential training services provided through DHHS are commonly referred to as waiver 114 services.

These last five services all require either licensing or a contract with DHHS. If you offer these services but are not licensed or under contract with DHHS, then such service would not be subject to the Service Provider Tax. These services are taxed based on the number of billing units billed out for the reporting period multiplied by the rate assigned to the provider by DHHS. (Please note: This rate should not include the 5% allowed for reimbursement of this tax.) The amount of taxable services provided during the reporting period is then multiplied by the Service Provider Tax rate (5%) to arrive at the amount of tax due for the reporting period.

3. ADDITIONAL INFORMATION

The information in this bulletin addresses some of the more common questions regarding the Service Provider Tax Law faced by your business. It is not intended to be all inclusive. Requests for information on specific situations should be in writing, should contain full information as to the transaction in question and should be directed to the:

**MAINE REVENUE SERVICES
SALES, FUEL & SPECIAL TAX DIVISION
P.O. BOX 1065
AUGUSTA, ME 04332-1065
TEL: (207) 624-9693
TTY: NEXTALK (888) 577-6690**

The Department of Administrative and Financial Services does not discriminate on the basis of disability in admission to, access to, or operation of its programs, services or activities.

Issued: December 20, 2006

(Published under Appropriation 010-18F-0002-07)

ATTACHMENT 1
Excerpts taken from 36 M.R.S.A.

§2551 Definitions

1-A. Community support services. “Community support services” means rehabilitative services provided to adults at least 18 years of age or to emancipated children that are provided in the context of a supportive relationship pursuant to an individual support plan that promotes a person’s recovery and integration of the person into the community and that sustain the person in that person’s current living situation or another living situation of that person’s choice. “Community support services” include only those services provided by a designated community support services provider licensed by and operating under a contract with the Department of Health and Human Services for such services, whether the provider is reimbursed through participation in the MaineCare program or with state grant funds.

1-B. Day habilitation services. “Day habilitation services” means services:

A. That are provided by community-based agencies to children or adults with mental retardation and include assistance with the acquisition, retention or improvement of self-help, socialization and adaptive living skills; and

B. That take place in a nonresidential setting separate from the home or facility in which the child or adult resides, except when a physician has ordered that such services be provided in the child’s or adult’s home, and focus on enabling the child or adult to attain or maintain maximum functional levels.

“Day habilitation services” includes only those services provided by designated agencies under a contract with the Department of Health and Human Services.

2. Extended cable and satellite television services. “Extended cable and satellite television services” means all cable and satellite television service that is in addition to the minimum service that can be purchased from a cable or satellite television supplier, including the use of associated equipment for which a charge is made. It does not include installation of the associated equipment for which a separate charge is levied.

3. Fabrication services. "Fabrication services" means the production of tangible personal property for a consideration for a person who furnishes, either directly or indirectly, the materials used in that production. "Fabrication services" does not include the production of tangible personal property if a sale to the consumer of the tangible personal property so produced would be exempt or otherwise not subject to tax under Part 3.

4. Furniture. "Furniture" means movable items that are intended to make a room or establishment useful for human habitation.

A. "Furniture" includes:

(1) Living room furniture, including, but not limited to, sofas, love seats, loungers, recliners, chairs, end tables, coffee tables, curio cabinets, home entertainment centers, book shelves and floor and table lamps;

- (2) Bedroom furniture, including, but not limited to, headboards, footboards, bed frames, mattresses, box springs, dressers, chests of drawers, mirrors, armoires, nightstands, bunk beds, roll-away beds and chests;
- (3) Baby furniture, including, but not limited to, cribs, dressers and changing tables;
- (4) Dining room furniture, including, but not limited to, tables, chairs, dinette sets, hutches and dry sinks;
- (5) Patio and outdoor furniture, including, but not limited to, tables, chairs, umbrellas, porch swings and gliders;
- (6) Office furniture, including, but not limited to, desks, chairs, tables, workstations, movable partitions, shelving, file cabinets, coat racks and couches; and
- (7) Home electronic devices, including home appliances, home computers, televisions, stereos and radios.

B. "Furniture" does not include:

- (1) Items that are affixed to real property such as sinks, toilets, built-in cabinets or light fixtures; or
- (2) Furnishings such as carpeting, artwork, draperies or blinds.

7-B. Personal support services. "Personal support services" means services provided to children or adults with mental retardation, including direct assistance with eating, bathing, dressing, personal hygiene and other activities of daily living. These services include only those services provided by designated agencies under a contract with the Department of Health and Human Services and:

- A. May include assistance with instrumental activities of daily living such as assistance with the preparation of meals, but does not include the cost of the meals themselves;
- B. If specified in the child's or adult's care plan, may include such housekeeping chores as bed making, dusting and vacuuming that are incidental to the care furnished, or are essential to the health and welfare of the child or the adult; and
- C. May be provided by a provider unrelated to the child or the adult or by an adult relative other than an adult recipient's spouse, but may not be provided in the same setting where residential training is provided.

8. Place of primary use. "Place of primary use" means the street address representative of where a customer's use of mobile telecommunications services primarily occurs, which must be either the residential street address or the primary business street address of the customer and must also be located within the licensed service area of the home service provider. For purposes of determining the place of primary use, "customer" means the person or entity that contracts with the home service provider for mobile telecommunications services or, if the end user of such services is not the contracting party, the person that is the end user of such services. The term

"customer" does not include a reseller of mobile telecommunications services or a serving carrier under an agreement to serve the customer outside the home service provider's licensed service area.

10. Private nonmedical institution. "Private nonmedical institution" means a person licensed by the Department of Human Services or the Department of Behavioral and Developmental Services to provide private nonmedical institution services to 4 or more MaineCare-eligible and other residents in single or multiple facilities under a written agreement with the Department of Human Services or the Department of Behavioral and Developmental Services. "Private nonmedical institution" does not include a health insurance organization, hospital, nursing home or community health care center.

11. Private nonmedical institution services. "Private nonmedical institution services" means services, including food, shelter and treatment, that are provided by a private nonmedical institution.

13-A. Residential training services. "Residential training services" means services provided to children or adults with mental retardation to assist with the acquisition, retention or improvement of skills related to activities of daily living, such as personal grooming and cleanliness, household chores, eating and food preparation, and the social and adaptive skills necessary to enable the child or adult to live in a noninstitutional setting. Residential training services include only those services provided by designated agencies under a contract with the Department of Health and Human Services.

15. Sale price. "Sale price" means the total amount of consideration, including cash, credit, property and services, for which personal property or services are sold, leased or rented, valued in money, whether received in money or otherwise, without any deduction for the cost of materials used, labor or service cost, interest, losses and any other expense of the seller. "Sale price" does not include:

- A. Discounts allowed and taken on sales;
- B. Allowances in cash or by credit made upon the return of services pursuant to warranty;
- C. The price of services rejected by customers when the full sale price is refunded either in cash or by credit; or
- D. The amount of any tax imposed by the United States or the State on or with respect to the sale of a service, whether imposed upon the seller or the consumer.

17. Service provider. "Service provider" means a person who sells one or more of the services listed in section 2552.

20. Telecommunications services. "Telecommunications services" means all telecommunications services as described in this subsection.

- A. "Telecommunications services" includes:

- (1) The provision of 2-way interactive communications through the use of telecommunications equipment, exclusive of mobile telecommunications services; and
- (2) Two-way interactive mobile telecommunications services provided by a home service provider to a customer whose place of primary use is within this State, to the extent those services are associated with transmissions that originate and terminate within this State or within any other state. For purposes of this paragraph, the term "state" includes the District of Columbia and any territory or possession of the United States.

B. "Telecommunications services" does not include:

- (1) Except as otherwise provided by this subsection, service originating or terminating outside this State;
- (2) Access services;
- (3) Directory advertising services;
- (4) The sale of unbundled network elements for use in the provision of telecommunications services;
- (5) The lease of telecommunications equipment;
- (6) Prepaid calling service; or
- (7) Mobile telecommunications services provided by a home service provider to a customer whose place of primary use is not within this State.

21. Video media; video equipment. "Video media" means prerecorded magnetic tapes used for noncommercial playback of images and sound on video equipment, and other electronic audio and video media that provide for noncommercial interactive utilization by a person or persons, including digital video discs. "Video equipment" means equipment used to play video media, equipment used for recording images and sound for subsequent noncommercial playback and equipment used for noncommercial interactive utilization of electronic audio and video media.

36 § 2552. Tax imposed

1. Rate. A tax at the rate of 5% is imposed on the value of the following services sold in this State:

- A. Extended cable and satellite television services;
- B. Fabrication services;
- C. Rental of video media and video equipment;
- D. Rental of furniture, audio media and audio equipment pursuant to a rental-purchase agreement as defined in Title 9-A, section 11-105;
- E. Telecommunications services;
- F. The installation, maintenance or repair of telecommunications equipment;
- G. Private nonmedical institution services;
- H. Community support services;
- I. Day habilitation services;
- J. Personal support services; and
- K. Residential training services.